IN THE SUPREME COURT OF THE STATE OF DELAWARE

KESSELEE KANDA,	§	
	§	No. 684, 2011
Defendant Below-	§	
Appellant,	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID 1010009629
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: September 6, 2012
Decided: October 12, 2012

Before **HOLLAND**, **BERGER**, and **JACOBS**, Justices

O R D E R

This 12th day of October 2012, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In August 2011, a Superior Court jury found the defendant-appellant, Kesselee Kanda, guilty of eleven counts of Burglary in the Second Degree, eleven counts of Conspiracy in the Second Degree, nine counts of Theft, five counts of Criminal Mischief, two counts of Possession of a Firearm with an Obliterated Serial Number, and one count of Receiving a Stolen Firearm. The Superior Court sentenced Kanda to a total period of eleven and a half years at Level V

incarceration to be followed by decreasing levels of supervision. This is Kanda's direct appeal.

(2) Kanda's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Kanda's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Kanda's attorney informed him of the provisions of Rule 26(c) and provided Kanda with a copy of the motion to withdraw and the accompanying brief. Kanda also was informed of his right to supplement his attorney's presentation. Kanda has raised several issues for this Court's consideration. The State has responded to Kanda's issues, as well as to the position taken by Kanda's counsel, and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[1]

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[1]*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) The State's evidence at trial established that a rash of burglaries occurred in the Newark area in the summer and fall of 2010. The police had a break in the case in October 2010 while investigating an unrelated burglary. While at a local pawnshop, an officer saw a monogrammed high school ring that had been reported stolen in a burglary a few days earlier. The store's records indicated that the ring been sold to the store by Amara Gumaneh of Newark. Police executed a search warrant for Gumaneh's vehicle and residence on October 13, 2010. Inside Gumaneh's apartment, which he shared with Kanda, police found numerous stolen items including computers, cameras, gaming systems, jewelry, clothing, coins, and two guns with obliterated serial numbers with ammunition. Police also found personal documents belonging to several different burglary victims. The stolen items were found throughout the apartment, including each man's bedroom.

(5) After Gumaneh was arrested, he drove around with a detective pointing out various burglary locations and describing specific facts about each burglary. Gumaneh pled guilty to four counts of Burglary in the Second Degree and four counts of Conspiracy in the Second Degree. He testified against Kanda at trial. He testified that he moved to Delaware in June 2010 and began living with Kanda, his long-time friend. Kanda told him that he was committing burglaries and that Gumaneh could help him by selling the stolen goods. Gumaneh testified that he sometimes acted as Kanda's accomplice by driving him to the burglary sites

and picking up stolen goods after Kanda committed the burglaries. Gumaneh would then purchase the goods from Kanda and then resell them or dispose of them. Kanda did not testify at trial. The jury convicted him of thirty-nine charges.

(6) Kanda has raised four issues for this Court's review in response to his counsel's motion to withdraw. First, he contends that the police lacked probable cause to search his apartment without a warrant. Second, he contends that the police lacked probable cause to arrest him. Third, he contends that the evidence was insufficient to sustain his convictions. Finally, he contends that the trial court erred in admitting specific hearsay testimony. We review these claims in order.

(7) With respect to Kanda's first argument, the arresting officer testified under oath that the search of Kanda and Kumaneh's apartment was pursuant to a valid search warrant. Accordingly, there is no factual basis for Kanda's claim that the police conducted a warrantless search.

(8) Kanda next claims that the police lacked probable cause to arrest him. Probable cause is determined by the totality of the circumstances, as viewed by a reasonable police officer in light of his or her training and experience.[2] Probable cause exists when the police present facts to suggest "there is a fair probability that the defendant has committed a crime."[3] In this case, the search of Kanda's apartment revealed a large quantity of stolen items in almost every room of the

[2] *Thomas v. State*, 8 A.3d 1195, 1197 (Del. 2010).
[3] *Id.*

apartment, including his bedroom. Given these circumstances, we find no merit to Kanda's claim that the police lacked probable cause to arrest him.

(9) Kanda next asserts that the evidence was insufficient to convict him because there was no physical evidence to tie to him to the burglaries and no other evidence to corroborate Gumaneh's testimony against him. In assessing a challenge to the sufficiency of the evidence**,** this Court's standard of review is "whether *any* rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."[4] For purposes of reviewing such a claim, "there is no distinction between direct and circumstantial evidence."[5] In this case, Kanda's assertion that there was no independent evidence to corroborate Gumaneh's testimony is simply untrue. Kanda's apartment, including his bedroom, was replete with items stolen during multiple burglaries. There was more than sufficient evidence for the jury to convict Kanda.

(10) Kanda's final claim is that the State presented inadmissible hearsay evidence. The record reflects that the investigating officer testified that a woman called the police and reported that she saw a disheveled-looking black man in his twenties who was holding a bag of electronics and sitting on the steps leading up to an apartment on the day that apartment was reportedly burglarized. The officer

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[4] *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).
[5] *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

testified that he did not discover the caller's identity until sometime after Kanda was arrested. He tried, but could not reach the caller to conduct a follow-up investigation.

(11) Defense counsel did not object to this testimony at trial. Accordingly, we review the Superior Court's admission of this hearsay evidence for plain error.[6] An error is plain if it is so clearly prejudicial to a defendant's substantial rights as to jeopardize the integrity of the trial.[7] In this case, we find that the admission of the caller's statements, which were not specific to Kanda, were harmless beyond a reasonable doubt.[8] The strength of the other evidence presented at trial, as we have already found, was more than sufficient to sustain Kanda's convictions. Moreover, it appears that defense counsel made a strategic choice to allow the officer's hearsay testimony in order to create a reasonable doubt. In closing, defense counsel argued to the jury that there was no physical evidence or eyewitness testimony to link Kanda to the burglaries. Counsel referred to the investigating officer's testimony regarding the phone call and argued that the police could have obtained an eyewitness statement that might have identified the burglar, but they did not. Counsel further asserted that the eyewitness' description of the burglar on the phone was consistent with Gumaneh and not Kanda. Accordingly, under these

[6] Del. Supr. Ct. R. 8 (2012).
[7] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).
[8] *See VanArsdall v. State*, 524 A.2d 3, 11 (Del. 1987).

circumstances, we find no plain error in the Superior Court's admission of the hearsay statements.

(12) This Court has reviewed the record carefully and has concluded that Kanda's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Kanda's counsel has made a conscientious effort to examine the record and the law and has properly determined that Kanda could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice